

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 99-0241**  
**RESPONSIBLE OFFICER**  
**SALES TAX**  
**For Tax Periods: 1990-1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**ISSUES**

**1. Sales and Use Tax-Statute of Limitations**

**Authority:** IC 6-2.5-9-3, IC 26-1-3.1-118, Ball vs. Indiana Department of Revenue, 563 NE2d 522 (Ind. 1990).

Taxpayer contends that the assessment is barred by the Statute of Limitations.

**2. Tax Administration-Constitutionality**

**Authority:** Mullane vs. Central Hanover Bank, 339 U.S. 306, 70 S.Ct.652, 94 L.Ed. 865 (1950), IC 6-8.1-5-1.

Taxpayer contends that the Indiana Department of Revenue's actions in this matter violate Taxpayer's due process rights pursuant to the United States Constitution.

**3. Tax Administration-Laches**

**Authority:** Ball vs. Indiana Department of Revenue, 563 NE2d 522(Ind. 1990), IC 6-8.1-5-1 (b).

### **Statement of Facts**

The Indiana Department of Revenue timely assessed the corporation liabilities for sales taxes unpaid to the state for the tax period 1990-1994. The corporation did not remit these taxes. The Indiana Department of Revenue assessed the liabilities against Taxpayer as a responsible officer of the corporation. Taxpayer protested this assessment. More facts will be provided as necessary.

#### **1. Responsible Officer Liability – Statute of Limitations**

### **Discussion**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Taxpayer does not contest that he was an officer with the duty to remit the sales taxes to the state. Rather, Taxpayer contends the statute of limitations bars the Department's efforts to collect on dishonored checks. IC 26-1-3.1-118 sets the statute of limitations for actions to enforce an obligation with respect to a dishonored draft as three (3) years after the dishonor of the draft.

Notices of proposed assessment including liabilities resulting from the dishonored drafts were sent to the corporation within three years of the dishonor of the drafts. The Department argues that Taxpayer is deemed to have had knowledge of those notices of proposed assessments since he was a responsible officer of the corporation. Ball vs. Indiana Department of Revenue, 563 NE2d 522.(Ind. 1990) considers this issue and concludes that the Department's interpretation of the statute is correct in that an attempt to collect by sending a notice of proposed assessment to the corporation is an attempt to collect from the responsible officer. The original effort to collect was within the three year limit. Therefore the assessment is not barred by the statute of limitations.

### **Finding**

Taxpayer's first point of protest is denied.

## **2. Tax Administration: Constitutionality**

### **Discussion**

Taxpayer contends that the Department's interpretation of the statute violates Taxpayer's rights to due process under the United States Constitution. Procedural due process requires notice and a meaningful opportunity to be heard, Mullane vs. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Taxpayer agrees that there was notice but contends that there was not a meaningful opportunity for Taxpayer to be heard and defend himself.

Taxpayer is currently availing himself of administrative remedies for a hearing pursuant to IC 6-8.1-5-1. Taxpayer further has a right to an appeal in Tax Court This provides Taxpayer the opportunity to be heard and defend himself. Taxpayer's constitutional right to due process is not violated.

### **Finding**

Taxpayer's point of protest is denied.

## **3. Tax Administration: Laches**

### **Discussion**

In his final point of protest , Taxpayer contends that the doctrine of laches denies Department's ability to assess Taxpayer as responsible officer in this situation. The Indiana Supreme Court held in Ball at page 522 that laches would apply if the Department acted "in an unusually dilatory manner." Pursuant to IC 6-8.1-5-1 (b), Taxpayer carries the burden of proving that the Department is incorrect. Taxpayer presented no evidence that the Department acted in an unusually dilatory manner in this case. Therefore laches does not bar the assessment against Taxpayer.

### **Finding**

Taxpayer's final point of protest is denied.